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**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Docket Number (Optional)

**P-3818**

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on \_\_\_\_\_

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Application Number

**08/928,272**

Filed

**September 12, 1997**

First Named Inventor

**Michael J. Iskra**

Art Unit

**3771**

Examiner

**Teena Kay Mitchell**

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.  
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)

☒ attorney or agent of record.  
Registration number 52,515

☐ attorney or agent acting under 37 CFR 1.34.  
Registration number if acting under 37 CFR 1.34 \_\_\_\_\_

**/Mark Lindsey/**

Signature

**Mark Lindsey**

Typed or printed name

**201-847-6262**

Telephone number

**February 26, 2008**

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below\*.

☐ \*Total of \_\_\_\_\_ forms are submitted.

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**PRESENTATION OF PRE-APPEAL BRIEF REASONS FOR REVIEW**

A complete listing of the current pending claims 1 and 5-9 can be found in Applicant's Response dated January 28, 2008 to the Final Office Action dated November 26, 2007.

**Claims Rejections – 35 USC § 102**

Claims 1 and 6 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3,945,928 to Ayres, ("Ayres").

This rejection is respectfully traversed.

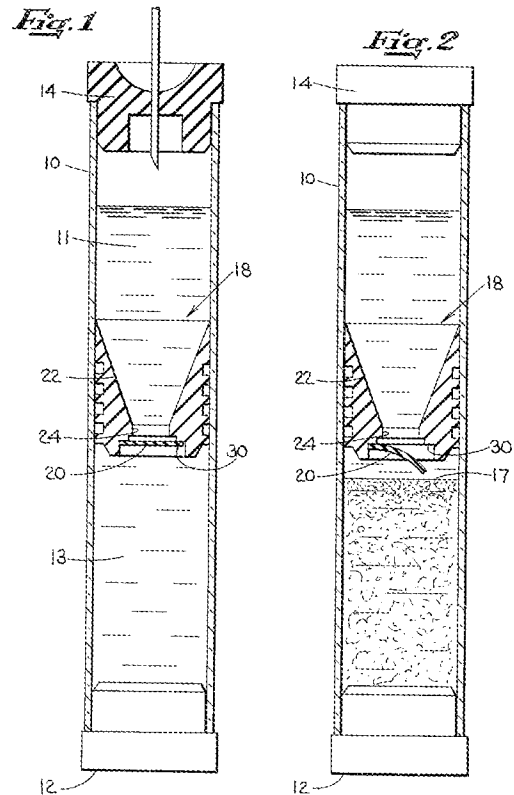
Of the claims rejected, claim 1 is independent, with the remaining claims dependent thereon.

Claim 1 recites among other things an assembly with the following features:  
*an elongate tubular housing having opposed first and second ends; and*  
*a solid partition forming a closed bottom positioned within said housing between said first and second ends; ....*  
*said housing defining a volume for specimen collection and containment therein between said first end and said partition;*  
*said second end forming a false bottom comprising a bottom end below said partition,*  
*said bottom end comprising an annular skirt and a semi-spherical bottom.*

Applicant submits that Ayres fails to disclose at least the claimed features of:

- (a) a semi-spherical bottom,
- (b) a solid partition, and
- (c) a false bottom,

The Examiner proposes that Ayres (See Figs.1 and 2 shown below) discloses a semi-spherical bottom.



Applicant respectfully points out that Ayres discloses an evacuated glass tube having closed ends and that the lower end of glass tube (10) is a hollow cylinder.

Ayres fails to disclose a semi-spherical bottom.

Thus, Ayres fails to anticipate claim 1.

In addition, Ayres discloses a valve fixedly disposed between the ends to divide the tube into upper and lower chambers. The valve includes an elastomeric body having a centrally located circular opening 24 with a flap valve 20 closing the opening. (see Col. 2 lines 51 to 59, emphasis added). The flap has a specific gravity greater than blood and when subjected to centrifugal forces will unseat to open the valve so that the chambers communicate (see Col. 2 lines 51 to 59, emphasis added).

Thus, the valve 18 of Ayres is not a solid partition as claimed in the present invention as it allows the upper and lower chambers to communicate.

In addition, Ayres discloses that when the tube 10 is to be filled with a blood sample, stopper 14 is punctured with a cannula so that blood is drawn into the evacuated upper chamber. As the upper chamber fills with blood, a pressure differential is created across flap 20 causing it to be flexed downwardly and be unseated from surface 30. The unseating of flap 20 allows blood to flow into the lower chamber so that the entire tube is filled with the blood sample (see Col. 3 lines 27 to 34, emphasis added) upon collection.

Therefore, Ayres fails to disclose a false bottom.

For these reasons Applicant submits that independent claim 1 and dependent claim 6, are not anticipated by the Ayres reference.

Nor would Ayres render claim 1 obvious.

There is no suggestion in Ayres to have a semi-spherical bottom at the base of the glass tube (10). In fact Ayres teaches away from a semi-spherical bottom by requiring a hollow cylindrical tube to be provided in order to allow sufficient securement and sealing of the stopper (12) within the tube.

Furthermore, there is no suggestion in Ayres whatsoever to have a solid partition, within the glass tube (10). In contrast, Ayres teaches that it is essential for the valve (18) to provide a passageway (24) between the upper and lower chambers so that the sample can flow between the upper and lower chambers (see Col. 3 lines 19 to 34). Thus a solid partition would destroy the function of Ayres.

In addition, there is no suggestion in Ayres to have a false bottom. Conversely the use of a false bottom in Ayres would render the tube inoperable.

Accordingly, it is submitted that the container assembly as defined by claim 1 is not taught or suggested by Ayres. In addition, claims 5-9 being dependent on claim 1 are likewise patentable over the cited reference.

**Claims Rejections – 35 USC § 103**

Claims 5 and 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ayres in view of U.S. Patent No. 5,458,854 to Burns (“Burns”).

These rejections are respectfully traversed.

Ayres fails to disclose, teach or suggest the invention of claim 1 for the reasons as discussed above.

Burns is cited for use of a partition having an arcuate shape, a thermoplastic material and outside tube diameter dimensions.

Applicant submits Burns fails to disclose, teach, or suggest the claimed assembly of claim 1 as discussed previously and does not remedy the shortcomings of Ayres. In addition, claims 5 and 7-9 being dependent on claim 1 are likewise patentable over the cited reference.